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ZORAIDA PEÑA CANAL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ZORAIDA PEÑA CANAL,

Plaintiff,

v.

MABELLE DE LA ROSA DANN, TERESA
VITTET DE LA ROSA, and DOES 1 to 10,
inclusive,

Defendants.

Case No. 4:09-cv-03366 CW

**NOTICE OF MOTION AND MOTION
FOR AMENDED JUDGMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR AMENDED
JUDGMENT**

**Date: November 18, 2010
Time: 2:00 p.m.
Dept: Courtroom 2**

1 PLEASE TAKE NOTICE that on November 18, 2010, at 2:00 p.m., or as soon
2 thereafter as the matter can be heard, in Courtroom 2 of the above-entitled court, located at 1301
3 Clay Street, Oakland, California, Plaintiff ZORAIDA PEÑA CANAL will move this Court for an
4 Order amending the judgment rendered in the above-entitled matter.

5 The motion will be based on this Notice of Motion and Motion, the Memorandum
6 of Points and Authorities in support of the Motion, the pleadings and records on file herein, and
7 such oral and documentary evidence submitted at the hearing of the motion.

8 Dated: September 24, 2010

GEORGE A. YUHAS
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12 */s/ Tracey S. Lesetar*
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TRACEY S. LESETAR
Attorneys for Plaintiff
ZORAIDA PEÑA CANAL

MEMORANDUM OF POINTS AND AUTHORITIES

Pursuant to Federal Rule of Civil Procedure 59(e), Plaintiff Zoraida Peña Canal hereby moves the Court to amend the judgment entered on September 2, 2010.

On September 2, 2010, this Court granted Ms. Peña Canal's Application for Default Judgment, awarding Ms. Peña Canal \$618,812.82 in damages, including waiting time penalties and meal and rest break premiums. In its Order, the Court found that Defendant Vittet was responsible for \$22,858.62 in back wages for the period in which Ms. Peña Canal worked for Vittet. On September 2, 2010, the Clerk entered a Judgment against Defendants, stating that Dann is liable for \$618,812.82, of which Vittet is jointly and severally liable for \$22,858.62.

Ms. Peña Canal respectfully submits that she is entitled to recover waiting time penalties and meal and rest break premiums from Vittet, in addition to the back wages awarded. In the Application for Default Judgment, Ms. Peña Canal argued that that Vittet was liable for meal and rest break violations and waiting time penalties. *See* Memorandum of Points of Authorities in Support of Application for Default Judgment 14, 16. In addition, Ms. Peña Canal expressly stated that the \$22,858.65 in back wages did not include meal and rest break premiums or waiting time penalties. *Id.* at 23 ("wages for work from July 2006 to mid-September 2006 time period of labor equals \$22, 858.65, *without premiums and penalties*") (emphasis added).

The Court's conclusion that Dann is liable for wage premiums and penalties applies equally to Vittet, who jointly employed Ms. Peña Canal for a month and a half period. Like Dann, Vittet willfully withheld Ms. Peña Canal's wages in violations of Wage Order 15-2001 §§ 11(D), 12(B), and failed to provide meal and rest breaks in violation of Cal. Labor Code § 203(a). Accordingly, Vittet is liable for \$11,731.50 in waiting time penalties and \$2,133¹ in meal and rest break premiums for the period during which Ms. Peña Canal was employed by Vittet. *See* Declaration of Rocio Avila in Support of Application for Default Judgment ¶ 11 (explaining meal and rest break calculations); ¶ 14 (explaining waiting time calculations).

Ms. Peña Canal respectfully submits that it was "clear error" to not award wage premiums and penalties against Vittet, and that an amended judgment is therefore warranted

¹ Vittet is liable for two violations each day at \$23.70 per violation for the 45-day period of employment.

1 under Rule 59(e). *Dixon v. Wallowa County*, 336 F.3d 1013, 1022 (9th Cir. 2003). In sum, the
2 judgment should be amended to reflect that Vittet is liable for \$36,723.15 in back wages, meal
3 and rest break premiums, and waiting time penalties.

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5 Dated: September 24, 2010

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9 /s/ Tracey S. Lesetar

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